Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET FFL

Introduction

The landlords seek orders to end the tenancy and for possession of the rental unit pursuant to section 56 of the *Residential Tenancy Act* ("Act"). In addition, they applied to recover the cost of the filing fee, pursuant to section 72 of the Act.

Both the landlords and legal counsel for the tenants attended the hearing. Neither tenant attended the hearing. No service issues were raised, the parties (other than counsel) were affirmed, and Rule 6.11 of the *Rules of Procedure* was explained.

Preliminary Issue: Tenants' Request for Adjournment

Tenants' counsel requested an adjournment on the basis that the male tenant was attending a hospital appointment (for an epidural injection) and his wife, the female tenant, was accompanying him. A six-page document containing correspondence related to the medical appointment was submitted into evidence on November 5, 2021. This documentation was also provided to the landlords in an email that was sent to them around 6 PM on the evening before the hearing, noting that a request for an adjournment would be made.

The landlords strongly opposed the request for an adjournment. They briefly set out the extremely urgent, emergency situation, of their application, and explained the fear of having to face an imminent cancellation of their homeowners' insurance and a potential recall on their mortgage. The landlords called into the question of the timing of the request, noting that the tenants only appeared to engage the services of legal counsel at the last minute.

Tenants' counsel explained that he was on vacation and only found out about the matter from the tenants upon his very recent return. To his knowledge, the tenants had attempted to seek other legal counsel before his return.

It is noted that there is correspondence in the tenants' documentation dated September 21, 2021. A referral letter notes that there would be an in-person consultation for the male tenant on October 13, 2021. There is also an email of September 21, 2021, from a doctor's office assistant to the tenants, in which the male tenant is informed of a medical appointment (for the injection) on November 9, 2021 at 9 AM. That is, on the same morning as the dispute resolution hearing.

Rule 7.9 of the *Rules of Procedure,* under the Act, sets out the criteria that must be considered by an arbitrator when allowing or disallowing a party's request for an adjournment: (1) the oral or written submissions of the parties; (2) the likelihood of the adjournment resulting in a resolution; (3) the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; (4) whether the adjournment is required to provide a fair opportunity for a party to be heard; and (5) the possible prejudice to each party.

In this dispute, I have carefully considered the oral submissions of the parties. Counsel submitted that the adjournment is required because the tenants are unable to attend the hearing due to a medical appointment; the landlords submit that the matter is "extremely urgent" and that it needs to be dealt with forthwith.

As to the likelihood of an adjournment resulting in a resolution, this is a rather neutral factor, given that an application for orders under section 56 of the Act will result in a resolution either now or at a later hearing. (Neither party made any submissions in respect of this particular factor, however.)

As for the third factor, it is my finding that the need for an adjournment lay to a high degree on the neglect, wilful perhaps, of the tenants seeking the adjournment.

There is no evidence before me to find that, despite knowing (as far back as September 21) that there was a medical appointment scheduled for November 9, and despite being served with a Notice of Dispute Resolution Proceeding on October 21, 2021 (which clearly states that a hearing was scheduled for November 9), neither tenant made any effort to (1) reschedule what may be considered a non-emergent medical appointment, (2) contact the landlords seeking a mutual agreement to adjourn (leaving aside the email request sent at 6 PM the evening before the hearing, which borders on, to use the landlords' phrase, "a stall tactic"), or (3) retain available, non-vacationing legal counsel in a timely manner.

In respect of the fourth factor, while the tenants must be afforded the right to be heard, this right must be balanced with the landlords' right to have their application be heard in a judicious manner, free from adjournments resulting solely from the tenants' inaction.

Last, as to the fifth factor, it is my finding that, given the particulars of the application and the possible outcome should this matter not proceed as scheduled, the landlords face significant prejudice in respect of the security of their residential property.

Taking all of these factors into account, it was, and is, my finding based on the above-noted reasons that the tenants' request for an adjournment is denied.

Issues

1. Are the landlords entitled to orders under section 56 of the Act?
2. Are the landlords entitled to recovery of the filing fee?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The tenancy in this dispute began August 1, 2009. Monthly rent is $1,809.00 and the tenants paid a $750.00 security deposit and a $750.00 pet damage deposit. A copy of a tenancy agreement is in evidence.

The landlords seek to end the tenancy under section 56 of the Act because the excessive number of items in the garage and home ("hoarding" as described by the landlords) has led to a recent warning from their insurance broker that, due to the condition of the rental unit, the landlords' home insurance will be cancelled. A copy of the October 15, 2021 letter from their broker is in evidence. The letter reads as follows (relevant excerpt):

> Please be advised that the current tenant hoarding issue at [address of rental unit] presents both a fire and a life-threatening hazard. Hoarding is considered a moral and physical risk to insurers as it substantially increases the risk of loss. Hoarding puts the property at significant risk for the following reasons:

1. A higher risk a fire due to more flammable material. The photos of the home show a large number of papers, boxes, newspapers, magazines and other flammable materials. If a fire does break out it is more likely to spread in a home where there is hoarding.

2. Structural damage has occurred in homes or condos where hoarding is happening. Due to the extra weight, flooring and foundations can become compromised.

3. If there is slow leaking water damage it is less likely to be noticed and therefor creates much more damage. The presence of mold is more prevalent in homes where there is hoarding and is excluded.

Wawanesa will be taking immediate action due to the danger this poses. Wawanesa has agreed to give you 2 weeks to have the garage/home cleared of the abundance of contents. They will require photos showing that the property has been cleaned up. If the property is not cleaned up by 31 October 2021, they will proceed with getting off risk by registered letter. Once the registered letter is sent then you have 15 days until the location is removed from the policy.

The landlords testified that the broker became aware of the issue after the landlords contacted them about concerns they had from an insurance perspective, with the condition of the rental unit and the hoarding. They sent the broker several photographs, most or many of which were also submitted into evidence by the landlords. The photographs of the interior of the garage show a large number of items tightly stacked and packed in what is a 1200 ft^2 garage.

The landlords gave evidence that the male tenant contacted them in the Spring of 2021 asking the landlords to light the furnace pilot light. A licensed plumber and gas technician attended but apparently refused to light the pilot light due to the large number of combustible materials in the proximity.

In the Fall of 2021, the tenants again and repeatedly requested that the furnace be lit but the landlords, concerned with a fire hazard, refused. Worried that the tenants might try to start the furnace, the landlords contacted the insurance company and advised the broker of the situation. It was then that they sent the pictures to the broker. The letter from the broker was received by the landlords the next day.

The landlords testified that they conducted an inspection of the rental unit yesterday (that is, November 8, 2021) and found that the condition and state of the garage to be the same, if not worse. Indeed, they described the condition being such that you “cannot even get into the building.” There is a “wall of items.”

As for the persistency of the problem, the landlords explained that they have tried a number of times to have the tenants deal with the issue, but to no avail. Indeed, they previously issued a notice to end tenancy which went to arbitration on September 14, 2021 and from which resulted a cancellation of the notice (file number referenced on the cover page of this decision).

Tenants’ counsel referred to the previous hearing and argued that the issues were “very similar” to those in the present application. He argued that nothing, factually, has really changed since the September hearing. In fact, the only change is that now the landlords have a letter from an insurance broker in which the landlords’ insurance is being potentially under threat of cancellation. Counsel explained that the content of the October 15 letter is “very similar” to an email dated August 26 sent from the broker to the landlord. (No copy of that email was submitted into evidence by the tenants.)

It is, according to counsel, his experience that homeowner insurance is not typically cancelled in the manner as described in the landlords’ submissions. He remarked that there is nothing in evidence such as a letter directly from Wawanesa, and, that “one would expect Wawanesa to send something directly” to the landlords. Further, he argued that there is no copy of the actual insurance policy in evidence that might serve as a reference as to which term might be breached leading to the policy’s cancellation.

Counsel argued that the landlords are seeking to evict the tenants on nothing more than the landlords’ statements and a letter from a third-party insurance broker without any evidence of the actual risk to the insurance. Last, counsel noted that the photographs are undated (the landlords later noted that they were taken in April 2021).

In rebuttal and final submissions, the landlords reiterated that there is a significant difference between this application and the matter before the arbitrator on September 14: in this instance there is a letter from the insurance broker advising the landlords that their insurance will be cancelled unless something is done about the hoarding. The landlords were given until October 31, 2021 to clean up the property. And they argued that it is irrelevant that the information did not come from the insurance company directly: the insurance broker is a representative of the insurer.

The landlords stressed that “it’s not the pilot light that the issue, it’s that the insurance is going to be cancelled.” They further added that they face a $3 million liability should the insurance be cancelled, not to mention significant risk to the other occupants residing on the property.

Analysis

Section 56(1) of the Act permits a landlord to make an application for dispute resolution to request an order (a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47, and (b) granting the landlord an order of possession in respect of the rental unit.

In order for me to grant an order under section 56(1) of the Act, an arbitrator must be satisfied, on a balance of probabilities, that

(a) the tenant or a person permitted on the residential property by the tenant has done any of the following:

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
- (iii) put the landlord's property at significant risk;
- (iv) engaged in illegal activity that
  - (A) has caused or is likely to cause damage to the landlord's property,
  - (B) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
  - (C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- (v) caused extraordinary damage to the residential property, and

(b) it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 *[landlord's notice: cause]* to take effect.

In this case, the landlords’ evidence – most notably the letter from the insurance broker dated October 15, 2021 – persuades me on a balance of probabilities that the tenants

have, by virtue of the manner in which they have stored their property in the garage of the rental unit which led to the warning letter, seriously jeopardized the lawful right and interest of the landlords. They have also, I find, put the landlords' property at significant risk. Significant risk not necessarily from a fire hazard perspective (although there may be that risk), but, at significant risk of becoming uninsured. An uninsured residential property is a significant risk to any homeowner.

Little significance is made of the fact that the letter came from an insurance broker, versus directly from the insurance company. Insurance brokers are, in almost all cases, the de facto agents for insurance companies and as such are empowered to make statements such as those made in the letter of October 15. Indeed, the language used in the letter is neither speculative, abstract, nor general in nature. Rather, it is declarative and expressed in a tone conveying authority conferred upon the broker by the insurance company. For example (my emphasis), "Wawanesa will be taking immediate action due to the danger this poses, and "Wawanesa has agreed to [. . .], and "They will require [. . .]." There is little doubt in my mind that the insurance company intends to follow up. In fact, the landlords added that they are required to advise their insurance broker of the outcome of today's hearing.

Last, given the extremely tight deadline imposed by the insurer – a period of two weeks which has now in fact expired – it is my finding that it would be unreasonable and unfair to the landlords to have to wait for a notice issued under section 47 of the Act.

Taking into careful consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlords have met the onus of proving that they are entitled to orders under section 56 of the Act.

Thus, pursuant to section 56(1)(a) of the Act, the landlords are hereby granted an order ending the tenancy effective immediately. And, pursuant to section 56(1)(b) of the Act, the landlords are granted an order of possession. This order of possession, which shall take effect two days after service, must be served by the landlords on the tenants in a manner that complies with section 88 of the Act.

Section 72 of the Act permits an arbitrator to order compensation for the cost of the filing fee to a successful applicant. As the landlords succeeded in their application, they are awarded $100.00 in compensation to cover the cost of their application filing fee.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if "after the end of the tenancy, the director orders that the landlord may retain the amount." As such, the landlords are ordered and authorized to, after the tenants vacate the rental unit, retain $100.00 of the tenants' security deposit in satisfaction of the award.

Conclusion

The landlords' application is granted.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: November 10, 2021

Residential Tenancy Branch